

MEMORANDUM

Agenda Item No. 14(A)(8)

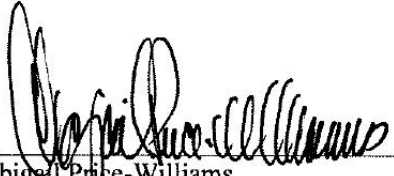
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 20, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution authorizing the County Mayor to negotiate and execute amendments to (1) preferential berthing rights agreements and cruise terminal usage agreements providing for a two-phase coronavirus disease 2019 (COVID-19) recovery period and (2) the Ground Lease with Miami Cruise Terminal A, L.L.C. and its permitted assignee (MCTA Ground Lease); providing that such amendments have an estimated fiscal impact of \$68,500,000.00 for the first phase of the COVID-19 recovery period, increasing at the rate of approximately \$7,000,000.00 per month until the commencement of the second phase of the COVID-19 recovery period, and then at the rate of approximately \$7,000,000.00 per month, subject to reduction based on the duration of the second phase of the COVID-19 recovery period and passenger volumes; providing that any amendments shall be subject to any prior reviews and satisfaction of any pre-conditions required under the Seaport Bond Ordinance, Ordinance No. 88-66, as amended, and other seaport-related County debt facilities and shall provide for the implementation of any requirements or recommendations of the consulting engineers under the Seaport Bond Ordinance; directing the County Mayor to provide a copy of any amendment to the MCTA Ground Lease to the Property Appraiser's Office in accordance with Resolution No. R-791-14; authorizing the County Mayor to perform all acts and execute any documents as may be required to give effect to the intent of this resolution and any amendments negotiated and executed as provided herein; and waiving the requirements of Resolution No. R-130-06

The accompanying resolution was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Rebeca Sosa.


Abigail Price-Williams
County Attorney


APW/smm

Memorandum



Date: October 20, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Authorizing the County Mayor or County Mayor's Designee to Negotiate and Execute Amendments to Certain Preferential Berthing Rights and Terminal Usage Agreements, and the Ground Lease with Miami Cruise Terminal A to Address Fiscal Year 2019-20 Obligations and to Establish a COVID-19 Recovery Period as Defined Below

Recommendation

It is recommended that the Board of County Commissioners ("Board") approve the accompanying resolution, authorizing the County Mayor or County Mayor's Designee to negotiate and execute amendments to (1) preferential berthing rights and terminal usage agreements with those cruise lines that have such agreements at PortMiami, and (2) the ground lease with Miami Cruise Terminal A, L.L.C. ("MCTA"), an affiliate of Royal Caribbean International, to address Fiscal Year 2019-20 obligations and to establish a COVID-19 Recovery Period, as defined below. In addition, it is recommended that Resolution No. R-130-06 be waived to expedite the execution of these time-sensitive agreements.

Scope

PortMiami is located within District 5 of Miami-Dade County, which is represented by Commissioner Eileen Higgins. The impact of this agenda item is countywide, as the Port is a regional asset and generates employment for residents throughout Miami-Dade County.

Background

In December 2019, a new coronavirus, that causes an infectious disease named coronavirus disease 2019 ("COVID-19") was first identified in Wuhan, Hubei Province, China. On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization ("WHO") declared the outbreak a "public health emergency of international concern." On March 11, 2020, given the spread and severity of the virus, the WHO declared COVID-19 a pandemic. On March 8, 2020, the United States Centers for Disease Control and Prevention ("CDC") issued guidance recommending that travelers defer all cruise ship travel worldwide and noted that "cruise ship passengers are at an increased risk of person-to-person spread of infectious diseases, including COVID-19."

On March 14, 2020, the CDC announced its first industry-wide "No Sail Order," preventing new passengers from boarding cruise ships for an initial period of 30 days. On April 9, 2020, the CDC extended the aforementioned "No Sail Order," for an additional period of 100 days commencing April 15, 2020, and extended it once again on July 16, 2020, through September 30, 2020. Additionally, the Cruise Lines International Association ("CLIA") has announced voluntary suspensions of U.S. cruise operations for its member lines, which currently run through October 31, 2020.

A. Economic Impact of Cruise Industry on Miami-Dade County

PortMiami is known as the “Cruise Capital of the World.” In Fiscal Year 2018-19, PortMiami hosted in excess of 6.8 million passenger movements, and prior to the COVID-19 public health emergency, PortMiami was on track to host in excess of 7 million passenger movements in Fiscal Year 2019-20. A 2019 study conducted by the Greater Miami Convention & Visitors Bureau revealed that annually there are approximately 1.7 million overnight cruise visitors in Miami, who—before and after their cruise—spend a combined \$1.1 billion in the community on hotel, food and beverage, transportation, entertainment, and shopping.

Other economic analyses show that the cruise industry is a critical component of the local economy in Miami-Dade County. For example, a 2017 PortMiami economic impact study conducted by Martin Associates showed that the cruise industry at PortMiami generated approximately 30,088 direct and indirect jobs, and according to an analysis performed by the Beacon Council, Inc., cruise lines comprise three of the fifteen largest employers in Miami-Dade County.

As of 2017, the cruise industry had a positive annual economic impact of approximately \$5.8 billion for Miami-Dade County. That amount was projected to increase based on the expansion of the cruise industry at PortMiami.

B. Effects of Cessation of Cruise Operations on Miami-Dade County in Fiscal Year 2019-20

Miami-Dade County and PortMiami continue to experience impacts from the COVID-19 pandemic. While many other industries have progressed to some phase of “New Normal” operations, the U.S. cruise industry, which remains under both a No Sail Order and voluntary cessation of operations, still faces the uncertainty of when and in what manner operations will resume, as regulatory reviews are ongoing.

In Fiscal Year 2019-20, PortMiami had 3,478,048 passengers, across all cruise lines, including passenger movements at Cruise Terminal A, which is operated by MCTA. This is just below half of the passenger movements that were projected for this fiscal year. With cruising suspended through the conclusion of FY 2019-20, PortMiami estimates a revenue loss of \$55 million, including projected revenues for cruise-associated activities such as parking and transportation fees.

Since March, PortMiami has taken steps to mitigate revenue losses. These efforts include, but are not limited to:

- the implementation of a hiring freeze, and elimination of overtime resulting in savings of approximately \$8 million;
- deferral of sponsorships, advertising, memberships, terminal activities and other marketing efforts resulting in savings of approximately \$5 million;

- reduction of business travel, promotions and other administrative expenses resulting in savings of approximately \$5 million;
- sunseting of the cargo incentive program, eliminating approximately \$6 million in rebates to the eligible shipping lines, effective April 1, 2020;
- reduction of approximately \$4 million in volume-based cruise incentives due to cruise lines not reaching thresholds to receive incentives; and
- savings on interest expenses on variable rate debt over the budgeted amount of approximately \$7 million.

These efforts are anticipated to yield a savings of approximately \$35 million through the end of FY 2019-20. The balance of the revenue shortfall will be covered by the budgeted surplus of \$10 million for FY 2019-20 and by use of \$10 million from the Port's unrestricted reserve. In addition to the \$35 million in savings outlined above, the Port has deferred \$32 million in non-revenue generating capital improvement projects.

The Port remains financially sound heading into FY 2020-21 with \$114 million in unrestricted reserves. The Port has implemented other measures that will yield additional savings in FY 2020-21, including negotiating scope reductions to existing capital improvement projects, reducing usage of outside engineering and design consultants across all projects, and developing new sources of revenues (e.g., Resolution No. R-732-20, authorizing the County Mayor or County Mayor's designee to enter into a usage agreement with Florida East Coast Railway, L.L.C., generating at least \$1.2 million in new revenue per year).

C. Industry Support and Recovery

1. Waiver of Lay Berth Fees

Port Tariff No. 010 establishes a dockage rate for vessel wet docking of 50% of tariff, per day. Dockage is based on the gross registered tonnage of the cruise vessel in question, and is at the rate of \$.393 per gross registered ton, per 24-hour period.

To support the cruise industry during the cessation of cruise operations, commencing on March 13, 2020, the County waived lay berth and harbor fees for any vessel that is owned by a cruise company that has a berthing or operating agreement with Miami-Dade County and docked at PortMiami with no passenger movement; this waiver has been extended through September 30, 2020. Through September 4, 2020, PortMiami has waived approximately \$14 million in lay berth fees; however, had the County not waived these fees the cruise ships would likely have not docked at PortMiami for crew repatriation or provisioning (which supported travel through Miami International Airport and the local businesses that provision cruise ships). It is worth noting that since September 4, the number of cruise ships lay berthing at the Port has substantially declined due to cruise companies removing idle ships from U.S. waters.

2. COVID-19 Recovery Period Framework

The cruise industry is vital to Miami-Dade County's economic health and benefits diverse sectors of the local economy. Towards the end of assisting the cruise industry and ensuring PortMiami's place as its preferred U.S. port, PortMiami has developed the concept of the COVID-19 Recovery Period ("Recovery Period"). The Recovery Period will provide a transition into normalized cruise passenger sailing.

The Recovery Period has two phases. The first phase of the Recovery Period retroactively commences in March 2020, with the beginning of the effects of the COVID-19 pandemic on cruise operations at PortMiami. From March 13, 2020, through a period that ends upon the earlier of 60 days after the lifting of the No Sail Order in its current form (unless passenger cruise operations in U.S. waters for said line begin sooner) or July 1, 2021, cruise lines will be excused from their minimum annual guarantee obligations.

In the case of Carnival Cruise Line ("Carnival"), with respect to its commitments under the Cruise Terminal F Agreement, the first phase will last through the substantial completion of the Cruise Terminal F improvements. In the case of Virgin Cruise Intermediate Limited ("Virgin"), the first phase will last through the substantial completion of Cruise Terminal V, which is currently under construction. During the first phase of the Recovery Period, the cruise lines will not be required to use their accumulated surplus credits to cover any shortfalls.

The second phase of the Recovery Period commences immediately upon the conclusion of the first phase of the Recovery Period. As to cruise lines with preferential berthing rights or terminal usage agreements with the County, the second phase of the Recovery Period has the following facets:

- Cruise lines will be relieved of their minimum annual passenger guarantees, in exchange for their agreement: (1) to maintain or increase their PortMiami market share relative to other U.S. ports in terms of passenger volumes and/or (2) to guarantee vessel calls; and (3) on a cruise line by cruise line basis, to meet any other additional conditions required by the County Mayor or County Mayor's designee, if any, in his/her discretion (i.e., return of available weekend berthing rights, modifications to the scope of the County-funded components of construction projects or other County borne construction-related obligations, etc.);
- Notwithstanding any provision to the contrary in their preferential berthing rights or terminal usage agreements, cruise lines will be required to pay dockage and wharfage at their minimum contractual rates or those published in Port Tariff No. 010 (tariff rates for Fiscal Year 2020-21 are \$13.12 for wharfage and \$0.405 per gross registered ton for dockage), in both cases subject to a 3% annual rate of escalation;
- The passenger shortfall and surplus accounts shall not apply during the Recovery Period, nor shall any additional credits accrue during any portion of the Recovery Period; and
- Any parking-based incentives granted under their respective preferential berthing rights or terminal usage agreements will be waived throughout the Recovery Period.

The second phase of the Recovery Period will last up to 24 months. However, 30 days before the commencement of the second year of the second phase of the Recovery Period, each cruise line will have the option of resuming their regular obligations under their respective preferential berthing rights and terminal usage agreements. Any cruise line that so elects will be required to meet its passenger guarantees and will in exchange receive any incentives offered under their preferential berthing rights and terminal usage agreements.

In keeping with the spirit of providing relief to cruise lines that have operating agreements at PortMiami, MCTA's ground rent payment to the County for Cruise Terminal A (CT-A) shall be pro-rated to reflect the time period from March 13, 2020 until the earlier of the expiration of the first phase of the Recovery Period, whenever the first revenue passenger vessel docks at CT-A, or July 1, 2021. The County Mayor or County Mayor's designee, in his/her discretion, may additionally require MCTA to meet additional conditions benefitting the County.

Any relief granted under this delegation of authority would be subject to any prior reviews and satisfaction of any pre-conditions required under Ordinance No. 88-66, as amended, and any other Seaport-related County debt facilities.

Fiscal Impact/Funding Source

The fiscal impact through the end of Fiscal Year 2019-20 of the first phase of the Recovery Period is \$55 million, consisting of forgone net revenues derived from cruise wharfage and dockage fees. This has been offset by \$35 million in expense reductions resulting from Port actions taken in response to COVID-19 impacts and lower interest rates, plus \$32 million of deferred capital projects, as more fully described in section B of this memorandum.

Assuming no further extensions of the No Sail Order, the first phase of the Recovery Period would conclude on November 29, 2020 (60 days from September 30, 2020). For this additional period of the first phase of the Recovery Period, the fiscal impact would be approximately \$13 to \$13.5 million in terms of forgone revenues derived from wharfage, dockage and land rental fees, less incentives including parking. If the No Sail Order were extended, the fiscal impacts of the extended first phase of the Recovery Period would increase by approximately \$7 million per month (inclusive of rate increases), with such fiscal impacts continuing until the commencement of the second phase of the Recovery Period (which would commence on July 1, 2021, at the latest).

The fiscal impact of the second phase of the Recovery Period is contingent upon its commencement date and duration, any capacity restrictions imposed by regulation or voluntarily by the cruise lines, and market conditions as Port revenues are partly a function of passenger fees and use of ancillary cruise-related services. Given ongoing regulatory reviews, the specific resumption date for passenger cruise operations is unknown, as are any occupancy limitations on passenger cruise operations. Although cruise revenues are seasonal, on average, the Port generates approximately \$7 million per month in guaranteed net cruise revenues and approximately \$1 million in ancillary cruise-related revenues, such as ground transportation fees and transportation network entities. In the event there is no sailing on any cruise line during the entire second phase of the Recovery Period, the Port could forgo the approximately

\$7 million in monthly guaranteed revenues for 24 months. However, it is anticipated that cruise lines will resume sailing as soon as permitted, and once cruising resumes, cruise lines will be required to compensate the County based on their actual usage of the Port.

The Port can meet all its financial obligations without further utilizing unrestricted reserves even if cruising were not to resume until April 18, 2021 (if at that time vessels were at full occupancy), based on the current published itineraries; after April 18, 2021, the Port will need to take additional measures, including the extension of austerity measures and/or further use of the \$114 million unrestricted reserve balance available at the start of FY 2020-21. If cruise operations were not to resume for an extended period of time the unrestricted reserves would be sufficient to meet the Port's cash requirements for operating expenses, including debt service through September 30, 2022, though at that point the Port would likely miss debt service coverage ratios under Ordinance No. 88-66, as amended.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring the Agreement are Hydi Webb, Deputy Director; Andy Hecker, Managing Port Director/CFO; and Basil A. Binns, II, Assistant Port Director, Administration and Cruise Development.



Jack Osterholt
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 20, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 14(A)(8)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 14(A)(8)
10-20-20

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE AMENDMENTS TO (1) PREFERENTIAL BERTHING RIGHTS AGREEMENTS AND CRUISE TERMINAL USAGE AGREEMENTS PROVIDING FOR A TWO-PHASE CORONAVIRUS DISEASE 2019 (COVID-19) RECOVERY PERIOD AND (2) THE GROUND LEASE WITH MIAMI CRUISE TERMINAL A, L.L.C. AND ITS PERMITTED ASSIGNEE (MCTA GROUND LEASE); PROVIDING THAT SUCH AMENDMENTS HAVE AN ESTIMATED FISCAL IMPACT OF \$68,500,000.00 FOR THE FIRST PHASE OF THE COVID-19 RECOVERY PERIOD, INCREASING AT THE RATE OF APPROXIMATELY \$7,000,000.00 PER MONTH UNTIL THE COMMENCEMENT OF THE SECOND PHASE OF THE COVID-19 RECOVERY PERIOD, AND THEN AT THE RATE OF APPROXIMATELY \$7,000,000.00 PER MONTH, SUBJECT TO REDUCTION BASED ON THE DURATION OF THE SECOND PHASE OF THE COVID-19 RECOVERY PERIOD AND PASSENGER VOLUMES; PROVIDING THAT ANY AMENDMENTS SHALL BE SUBJECT TO ANY PRIOR REVIEWS AND SATISFACTION OF ANY PRE-CONDITIONS REQUIRED UNDER THE SEAPORT BOND ORDINANCE, ORDINANCE NO. 88-66, AS AMENDED, AND OTHER SEAPORT-RELATED COUNTY DEBT FACILITIES AND SHALL PROVIDE FOR THE IMPLEMENTATION OF ANY REQUIREMENTS OR RECOMMENDATIONS OF THE CONSULTING ENGINEERS UNDER THE SEAPORT BOND ORDINANCE; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PROVIDE A COPY OF ANY AMENDMENT TO THE MCTA GROUND LEASE TO THE PROPERTY APPRAISER'S OFFICE IN ACCORDANCE WITH RESOLUTION NO. R-791-14; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PERFORM ALL ACTS AND EXECUTE ANY DOCUMENTS AS MAY BE REQUIRED TO GIVE EFFECT TO THE INTENT OF THIS RESOLUTION AND ANY AMENDMENTS NEGOTIATED AND EXECUTED AS PROVIDED HEREIN; AND WAIVING THE REQUIREMENTS OF RESOLUTION NO. R-130-06

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Adopts and incorporates herein the foregoing recital as true and correct.

Section 2. Authorizes the County Mayor or County Mayor’s designee to negotiate and execute, substantially in the form described in the accompanying memorandum amendments to:

(a) the seaport preferential berthing rights agreements and cruise terminal usage agreements providing for a two-phase coronavirus disease 2019 recovery period; and

(b) the Ground Lease Agreement with Miami Cruise Terminal A, L.L.C. (“MCTA”) and its permitted assignee Sumitomo Mitsui Banking Corporation Lease and Finance (“SMBC-LF”) with respect to Cruise Terminal A (the “MCTA Ground Lease”).

The anticipated fiscal impact of the amendments, across all cruise lines, is approximately \$68,500,000.00 for the first phase, increasing at the rate of \$7,000,000.00 per month after November 29, 2020 until commencement of the second phase. The fiscal impact of the amendments, across all cruise lines, during the second phase is approximately \$7,000,000.00 per month during each month of no passenger cruising, subject to reduction as set forth in the amendments based on the actual duration of the second phase not to exceed 24 months and actual passenger volumes.

Section 3. Directs the County Mayor or County Mayor’s designee that any amendments negotiated under section 2, before execution, shall be subject to any prior reviews and satisfaction of any pre-conditions and covenants required under the Seaport Bond Ordinance and other Seaport-related County debt facilities. The Board further directs that any such amendments shall provide for the implementation of any requirements or recommendations of the Consulting Engineers under the Seaport Bond Ordinance.

Section 4. Directs the County Mayor or County Mayor’s designee to provide a copy of any amendments to the MCTA Ground Lease to the Property Appraiser’s Office in accordance with Resolution No. R-791-14.

Section 5. Authorizes the County Mayor or County Mayor’s designee to perform all acts and execute such other documents as may be required to give effect to the intent of this resolution and any amendments negotiated and executed as provided herein.

Section 6. Waives the provisions of Resolution No. R-130-06 requiring the completion of negotiations and execution by non-County parties before presentation to the Board.

The foregoing resolution was offered by Commissioner _____ , who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

- | | |
|--------------------------------|----------------------|
| Audrey M. Edmonson, Chairwoman | |
| Rebeca Sosa, Vice Chairwoman | |
| Esteban L. Bovo, Jr. | Daniella Levine Cava |
| Jose “Pepe” Diaz | Sally A. Heyman |
| Eileen Higgins | Barbara J. Jordan |
| Joe A. Martinez | Jean Monestime |
| Dennis C. Moss | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared this resolution duly passed and adopted this 20th day of October, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MAG

Miguel A. Gonzalez